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RECENT DECISIONS

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ADMINISTRATIVE LAW—LIABILITY OF STATE—TRESPASS BY SOLDIERS.—Groups of soldiers, belonging to the New York National Guard, entered at various times upon the claimant's farm, adjoining Camp Whitman, and caused substantial damage. *Held*, the State was not liable for the unauthorized and tortious acts of its agents, committed without the scope of their authority. *Ashby v. State* (1918) 103 Misc. 206, 175 N. Y. Supp. 312.

Inasmuch as the claimant failed to establish that the depredations forming the subject of the suit were done at the direction of an officer, or in the course of the offenders' duties, the case was determinable by the familiar principle of agency. See *Marrier v. St. Paul, etc. Ry.* (1884) 31 Minn. 351, 17 N. W. 952. The court, however, enunciated also the broader rule of non-liability of a State, without its consent, for the unauthorized and tortious acts of its officers, even when they are vested with discretionary powers, and the acts are performed in the course of public service. The almost complete refusal of the State to subject itself to suit in cases involving the tortious conduct of public administrative officers, *Burroughs v. Commonwealth* (1916) 224 Mass. 28, 112 N. E. 491, is peculiar to Anglo-American law. Borchard, *Diplomatic Protection of Citizens Abroad* §§66, 69, 70. Relief may be had against the offending officer or agent himself, however, *Wyman*, *Administrative Law* §12; *Litchfield v. Bond* (1906) 186 N. Y. 66, 78 N. E. 719, except when the actual adverse interest in suit is in the State. See *Hopkins v. Clemson College* (1910) 221 U. S. 636, 31 Sup. Ct. 654. When an inferior militia officer obeys the order of a superior officer apparently falling within the scope of the latter's authority, only the superior officer will be held liable if such authority was in fact abused. *Despan v. Olney* (C. C. 1852) Fed. Cases No. 3822; see *Franks v. Smith* (1911) 142 Ky. 232, 134 S. W. 484. But, in New York, as elsewhere, militiamen on active duty are protected from civil and criminal process for offenses committed while on duty. N. Y. Consol. Laws c. 36 (Laws of 1909 c. 41) §§ 235, 14. That the remedy of a claimant for damages wrongfully inflicted by the armed forces of the State during active service is adequate, can hardly be contended, even independently of the financial irresponsibility of the great number of offenders. The doctrine that the State is not subject to suit for the tortious acts of its agents, committed in the scope of their service, has resulted from a generally discredited misapplication of the principle of *ultra vires*. Borchard, *op. cit.* §70. Its abandonment would appear highly desirable to insure the employment of greater care in the exercise of the powers of the State over the persons and property of its citizens.